

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7618 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHAGVATILAL AMBALAL MISTRI

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

MR TH SOMPURA, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 08/01/97

ORAL JUDGEMENT

Rule. Learned Government Counsel Mr.T.H.Sompura waives service of the Rule.

Upon hearing learned Counsel Mr. Jitendra Patel for the petitioner and learned Government Counsel Mr. T.H.Sompura for the respondents, it appears that the

present petition requires a partial recognition.

The facts and circumstances in which the present petition arises do not call for much scrutiny. It appears that the present petitioner happens to be a Government employee. There was an advertisement under the signature of the Additional Mamlatdar, Gandhinagar Taluka, saying that certain plots are to be sold out by public auction and that the plots are meant for running the workshops alone. This advertisement at Annexure.C is eloquently clear saying that the plots are to be sold out so that they could be utilised for the purpose of running the workshops thereon. The father of the present petitioner, late Shri Ambalal Mistri had participated in the public auction and later on, the plot came to be allotted to him as the highest bidder. Subsequently, late Shri Ambalal Mistri had filed the necessary application before the Collector, saying that his son, namely, the present petitioner, looks after the affairs and therefore, his name should be added as the occupant of the plot. It appears that this has been done, vide the orders dated May 23, 1975, available at Annexure.C to the petition. Later on, under some another scheme, the petitioner who happens to be the Government servant, had obtained a plot for the residential purposes. It was the opinion on the part of the Government that, the petitioner had done so by the suppression of the fact that he was having a plot allotted to him by the Government under some scheme. The allegation was that the petitioner had filed false affidavit saying that he has no residential house or plot or any other accommodation in the limits of Gandhinagar town. The Government wanted to construe that the earlier workshop plot which was allotted to the father of the petitioner and which now, at all the relevant time, was of the ownership of the present petitioner, was being utilised for the residential purposes also. Placing reliance upon this belief which according to the Government, appears to be supported by some literature, the grant of the plot made in favour of the present petitioner came to be cancelled. This has happened vide orders dated September 20, 1996. The said orders are in challenge in the present petition before me.

Upon hearing the learned Counsels for the parties, it appears that, looking to the facts and circumstances of the case and especially looking to the aspect of the matter that much would depend upon the factual data, the matter requires a remand to the Collector. It also appears that the Collector, Gandhinagar, while passing the orders dated September 30,

1996 had not afforded a reasonable opportunity of being heard to the petitioner. In view of this, the present petition requires a partial recognition and the matter requires to be transmitted to the Collector, Gandhinagar for decision and disposal according to law and on merits. I order accordingly.

It shall be open now for the Collector, Gandhinagar to issue a fresh show cause notice to the petitioner calling upon him to show cause as to why the grant of the residential plot should not be cancelled. The notice should be with all the necessary details and a reference to the necessary material. After the show cause notice is duly served upon the petitioner, it would be his liberty to reply the same, but before doing so, the petitioner would be entitled to ask for the inspection of the relevant material. If that is done, the Collector, Gandhinagar shall give the inspection. If the petitioner wants to have the certified copies of certain documents, the same could be had by the petitioner from the Collector, Gandhinagar, after the payment of the necessary charges according to the rules. After that is done, the Collector, Gandhinagar shall decide the matter after affording a reasonable opportunity of being heard to the petitioner. Interim relief granted in favour of the petitioner shall continue to operate for a period of two weeks after the decision to be rendered by the Collector.

The petition is allowed to the above extent only.
Rule is made absolute accordingly.
